EDITOR'S NOTE

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PROCEEDINGS AND ORDERS DATE: 010386

CASE NBR 85-1-05260 CSY
SHORT TITLE Lanier, Kenneth D. DOCKETED: Aug 19 1985
VERSUS South Carolina

Date	Proceedings and Orders
Aug 19 1985	Petition for writ of certiorari and motion for leave to proceed in forma pauperis filed.
Sep 4 1985	Brief of respondent South Carolina in opposition filed.
Sep 19 1985	DISTRIBUTED. October 11, 1985
Oct 15 1985	REDISTRIBUTED. October 18, 1985
Oct 21 1985	REDISTRIBUTED. November 1, 1985
Nov 4 1985	Petition GRANTED. Judgment VACATED and case REMANDED Opinion concurring in the judgment by Justice O'Connor with whom Justice Rehnquist joins. Dissenting statement from summary disposition by Justice Marshall. Opinion per curiam. (Detached opinion.)
Dec 5 1985	Mandate issued.

EDITOR'S NOTE

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

NO. 85-5260

ORIGINAL

KENNETH DALE LANIER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF SOUTH CAROLINA

STEPHEN P. WILLIAMS
Assistant Appellate Defender

SOUTH CAROLINA OFFICE OF
APPELLATE DEFENSE
Suite 301, 1122 Lady Street
Columbia, SC 29201
(803) 758-8601

ATTORNEY FOR PETITIONER.

QUESTION PRESENTED

IS A CONFESSION OBTAINED AFTER AN ILLEGAL ARREST, ALTHOUGH VOLUNTARY UNDER THE FIFTH AMENDMENT, ADMISSIBLE INTO EVIDENCE WHERE THERE IS NO SHOWING BY THE STATE THAT INTERVENING EVENTS OCCURRED WHICH SEVERED THE CAUSAL CONNECTION BETWEEN THE ILLEGAL ARREST AND THE CONFESSION SO THAT THE CONFESSION IS SUFFICIENTLY AN ACT OF FREE WILL TO PURGE THE PRIMARY TAINT?

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

NO. 85- _____

KENNETH DALE LANIER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF SOUTH CAROLINA

Petitioner Kenneth Dale Lanier would respectfully request of this Court the issuance of a Writ of Certiorari to review the judgment of the Supreme Court of South Carolina regarding the above-mentioned question presented.

CITATION TO OPINION BELOW

The opinion of the South Carolina Court of Appeals, State v. Lanier, (S.C. Ct. of Appeals Opinion No. 85-MO-003, Filed February 14, 1985) has not yet been reported. It is reproduced in the Appendix to this petition at A-1 to A-3. The Order of the South Carolina Court of Appeals denying rehearing of Petitioner's Appeal and the Petition for Writ of Certiorari and Order denying same is likewise unreported but reproduced herein at A-3 to A-16.

JURISDICTION

The judgment of the South Carolina Court of

Appeals was entered February 14, 1985. A timely Petition for Rehearing was filed and denied April 5, 1985. Petitioner timely filed a Petition for Writ of Certiorari in the South Carolina Supreme Court on May 6, 1985. This Petition was denied by the South Carolina Supreme Court in an Order dated June 27, 1985. This Court's jurisdiction is invoked pursuant to 28 U.S.C. §1257 (3), Petitioner having asserted below and herein a deprivation of rights guaranteed him under the United States Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Fourth Amendment to the United States Constitution which provides in part:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated....

It also involves the Fourteenth Amendment to the United States Constitution which provides in part:

> No State shall ... deprive any person of life, liberty of property without due process of law....

STATEMENT OF THE CASE

Petitioner Kenneth Dale Lanier was convicted of armed robbery and sentenced to imprisonment within the South Carolina Department of Corrections for a period of twenty (20) years.

In its opinion in Petitioner's case, the South Carolina Court of Appeals held that a statement given to police by Petitioner was admissible into evidence because the statement was given voluntarily, without discussing the legality of the arrest that preceded the statement and without regard to any intervening circumstances which may have severed the connection between the illegal arrest and the statement. (See App. p.1 - p.2).

HOW THE FEDERAL QUESTION WAS RAISED AND DECIDED BELOW:

Trial counsel for the Petitioner objected to the admissibility of the confession on the ground that Appellant's arrest was illegal under Payton v. New York, 445 U.S. 573 (1980). The trial court, using an improper "probable cause" analysis, ruled the statement was admissible at Petitioner's trial. (App. p.17, line 14 - p.21, line 4).

On appeal to the State Supreme Court, Petitioner argued that the confession was the product of an illegal arrest and should have been suppressed under the fruit of the poisonous tree doctrine. Petitioner's basis for this argument was that he was arrested in his home without a warrant in the absence of exigent circumstances and that the arrest was therefore illegal under the Fourth and Fourteenth Amendments and the holding of this Court in Steagald v. United States, 451 U.S. 204 (1981). and Payton v. New York, supra.

In treating the issue on appeal, the South Carolina Court of Appeals stated:

> Assuming, without deciding, that Lanier's arrest was illegal, we nevertheless hold his confession was admissible. A confession made while the accused is in custody before any warrant for his arrest has been issued is not per se inadmissible. State v. Funchess, 255 S.C. 385, 179 S.E.2d 25, cert. denied, 404 U.S. 915, 92 S. Ct. 236, 30 L.Ed.2d 189 (1971). Voluntariness remains as the test of admissibility. Id. Even if the arrest was illegal, the confession will be admissible if it is freely and voluntarily given. State v. Plath, 277 S.C. 126, 284 S.E.2d 221 (1981). Since Lanier does not claim his confession was not voluntary, his argument that the confession was inadmissible is without merit. (App. p.2).

Petitioner's conviction and sentence were affirmed by the Court of Appeals. In a timely Petition for Rehearing, the Petitioner requested the Court to reconsider its holding in this case on the grounds that the State Court cases relied on in its opinion, State v. Funchess and State v. Plath, both supra, were inconsistent with later

precedents of the United States Supreme Court. Without discussion, the South Carolina Court of Appeals denied Petitioner's request for rehearing.

Petitioner then filed a Petition for Writ of Certiorari in the South Carolina Supreme Court on the same grounds as his Petition for Rehearing. The South Carolina Supreme Court also denied the Petition without discussion. (App. p. A-8 - p. A-16).

REASONS FOR GRANTING THE WRIT

This Court has consistently held that the fact that a confession may be "voluntary" for purposes of the Fifth Amendment is not by itself sufficient to purge the taint of an illegal arrest. A finding of voluntariness for purposes of the Fifth Amendment is merely a threshold requirement for Fourth Amendment analysis. The test for admissibility of a confession following a violation of the Fourth Amendment is whether intervening events break the causal connection between the illegal arrest and the confession so that the confession is sufficiently an act of free will to purge the primary taint. Brown v. Illinois, 422 U.S. 590 (1975); Dunaway v. New York, 442 U.S. 200 (1979); Taylor v. Alabama, 457 U.S. 687 (1982); all cited favorably in Oregon v. Elstad, ___ U.S. ___, 105 S. Ct. 1285 at 1292 (1985).

The South Carolina Court of Appeals relied in its opinion on a 1971 S[illegible] precedent, State v. Funchess, supra, in which the South Carolina Supreme Court ruled that a confession obtained after an allegedly illegal arrest was admissible as long as the confession was voluntarily given within Fifth Amendment parameters (i.e., proper Miranda warnings were given and accused voluntarily waived his Fifth Amendment rights). As noted by the South Carolina Supreme Court in the Funchess decision, in 1971 there was a split of authority with reference to whether a confession obtained

after an illegal arrest was inadmissible in evidence under the holding of Wong Son v. United States, 371 U.S. 471 (1963).

We submit that the split of authority referred to in Funchess was squarely decided by the United States Supreme Court in Brown v. Illinois, Dunaway v. New York, and Taylor v. Alabama, supra. This doctrine has recently been reiterated in Oregon v. Elstad, supra. Thus, the precedential value of Funchess has been destroyed under the supremacy clause found in Article VI, §2 of the United States Constitution.

In State v. Plath, supra, the South Carolina Supreme Court once again held, citing State v. Funchess, that an illegal arrest would not render a subsequent confession inadmissible if the confession was given freely and voluntarily under the Fifth Amendment.

It is important to note that the Appellant in Plath did not seek to have his confession ruled inadmissible because he was arrested illegally, but contended that the indictment against him should have been quashed because the State had granted him immunity in exchange for his confession, provided that he was not a principal. Subsequently another suspect, Sheets, implicated the Appellant as a principal. The State then withdrew its grant of immunity and tried the Appellant as a principal. The issue on appeal was that the grant of immunity was illegally withdrawn because the Appellant's confession was illegally exploited to obtain his arrest. Although the South Carolina Supreme Court relied on State v. Funchess in its opinion in Plath, the Plath situation is squarely controlled by the holding of this Court in Michigan v. Tucker, 417 U.S. 433 (1974). Therefore, any references to Funchess in the Plath opinion is mere dicta and therefore has no precedental value.

It is abundantly clear that both the South Carolina Court of Appeals and the South Carolina Supreme Court have ignored the clear precedents of this Court established

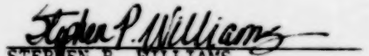
in Brown v. Illinois, Dunaway v. New York, Taylor v. Alabama, all supra, although these cases were cited to the Court during oral argument and in the subsequent Petitions for Rehearing and Certiorari to the South Carolina Supreme Court.

We respectfully submit that this Petition for Certiorari should be granted in order to uphold the principles of federalism mandated by the supremacy clause and for this Court to insure compliance by the State of South Carolina with the decisions of this Court defining the protections contained in the Fourth and Fourteenth Amendments to the United States Constitution.

CONCLUSION

The Writ should properly issue to review the judgment of the lower court.

Respectfully submitted,



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ATTORNEY FOR PETITIONER.

August 15, 1985.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

NO. 85-_____

KENNETH DALE LANIER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPENDIX

STEPHEN P. WILLIAMS
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(803) 758-8601

ATTORNEY FOR PETITIONER.

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

The State, ... Respondent,

v.

Kenneth Dale Lanier, ... Appellant.

Appeal From Aiken County
Frank McGowan, Jr., Judge

Memorandum Opinion No. 85-MO-003
Heard January 23, 1985 Filed February 14, 1985

AFFIRMED

Assistant Appellate Defender Stephen P. Williams, of South Caroline Office of Appellate Defense, of Columbia, for appellant.

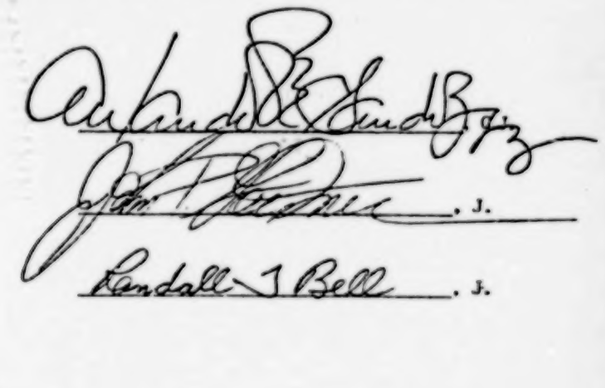
Attorney General T. Travis Medlock and Assistant Attorney General Harold M. Coombs, Jr., both of Columbia, and Robert J. Harte, Solicitor of the Second Judicial Circuit, of Aiken, for respondent.

PER CURIAM: Kenneth Dale Lanier was indicted for armed robbery. After trial by jury he was convicted and sentenced to twenty years imprisonment. Lanier appeals his conviction alleging that the trial court erred in admitting his confession into evidence because it was the product of an illegal arrest. We affirm.

The sole issue on appeal is whether Lanier's confession to participation in the armed robbery was admissible into evidence. The trial judge found that Lanier was properly advised of his rights prior to questioning and that the confession was voluntary. Lanier does not except to these findings. Rather he argues that his arrest was illegal under Payton v. New York, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d 639 (1980), because he was arrested at the front door of his house without an arrest warrant.

Assuming, without deciding, that Lanier's arrest was illegal, we nevertheless hold his confession was admissible. A confession made while the accused is in custody before any warrant for his arrest has been issued is not per se inadmissible. State v. Funchess, 255 S.C. 385, 179 S.E.2d 25, cert. denied, 404 U.S. 915, 92 S.Ct. 236, 30 L.Ed. 2d 189 (1971). Voluntariness remains as the test of admissibility. Id. Even if the arrest was illegal, the confession will be admissible if it is freely and voluntarily given. State v. Plath, 277 S.C. 126, 284 S.E.2d 221 (1981). Since Lanier does not claim his confession was not voluntary, his argument that the confession was inadmissible is without merit.

AFFIRMED.



. J.

. J.

The South Carolina Court of Appeals

REBA D. MIMS
CLERK

April 5, 1985

P.O. BOX 11629
COLUMBIA, S.C. 29211

Stephen P. Williams, Esquire
Assistant Appellate Defender
S. C. Office of Appellate Defense
Suite 301, 1122 Lady Street
Columbia, S. C. 29201

Re: The State v. Kenneth Dale Lanier

Dear Mr. Williams:

The Court has today returned your Petition for Rehearing with the following Order endorsed thereon:

"Petition denied.

s/ Alexander M. Sanders, Jr., C. J.

s/ John P. Gardner, J.

s/ Randall T. Bell, J.

April 5, 1985

Columbia, South Carolina."

The remittitur is being forwarded to the Clerk of Court of Aiken County today.

Very truly yours,

Reba D. Mims
Clerk

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APPELLATE DEFENSE

RDM/irc

cc: The Honorable Harold M. Coombs, Jr.
The Honorable Robert J. Harte, Solicitor

The Supreme Court of South Carolina

The State, Respondent,

v.

Kenneth Dale Lanier, Petitioner,

ORDER

Petitioner requests the Court to issue a writ of certiorari to review the decision of the Court of Appeals in State v. Lanier, 85 MO-003 (S.C. App., filed February 14, 1985). After careful consideration of the petition, we are of the opinion it should be denied.

FOR THE COURT

Columbia, South Carolina

June 27, 1985

CERTIFIED TRUE COPY:

Brenda I. Shealy
Deputy Clerk, S. C. Supreme Court

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85-5260

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1985

ORIGINAL

No. 85-5260

KENNETH DALE LANIER, Petitioner,

versus,

STATE OF SOUTH CAROLINA, Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

T. TRAVIS MEDLOCK
Attorney General

HAROLD M. COOMBS, JR.
Assistant Attorney General

Post Office Box 11549
Columbia, S.C. 29211

ATTORNEYS FOR RESPONDENT.

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES THAT A TRUE COPY OF Brief in Opposition HAS BEEN SERVED UPON OPPOSING COUNSEL BY MAILING 1 COPY IN AN ENVELOPE PROPERLY ADDRESSED WITH POSTAGE PREPAID THIS 4th DAY OF September, 1985.

Harold M. Coombs, Jr.
ATTORNEY FOR Respondent

SWORN TO BEFORE ME THIS 4th DAY OF September, 1985.

Karen G. Reuter (L.S.)
Notary Public for South Carolina
My Commission Expires: 9-17-86

QUESTION PRESENTED

I.

Should the writ be granted when the South Carolina Court of Appeals has applied the applicable constitutional principles and correct law and found that an admittedly voluntary confession is not rendered inadmissible where it is not contended that the confession was tainted by a prior arrest?

INDEX

CASES INVOLVED

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1985

No.

KENNETH DALE LANIER, Petitioner,

versus,

STATE OF SOUTH CAROLINA, Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

OPINION BELOW

The opinion of the South Carolina Court of Appeals is reported in Memorandum Opinion No. 85-MO-003, filed February 14, 1985, as reproduced in Petitioner's Appendix at pages A-1 - A-2.

JURISDICTION

Respondent does not question the Court's jurisdiction in this proceeding.

QUESTION PRESENTED

I.

Should the writ be granted when the South Carolina Court of Appeals has applied the applicable constitutional principles and correct law and found that an admittedly voluntary confession is not rendered inadmissible where it is not contended that the confession was tainted by a prior arrest?

ARGUMENT

The writ should be denied since the South Carolina Court of Appeals applied the applicable constitutional principles and correct law and found that an admittedly

voluntary confessi is not rendered inadmis ble where it is not contended that the confession was tainted by a prior arrest.

At trial Petitioner's sole grounds for the suppression of his confession was the contention that he did not know that the statement could be used in a court of law and there was no reason to arrest him -- especially without a warrant. (Res. App. pp. 1-2; p. 3, line 10-p. 7, line 6). Petitioner did not contend that his statement was not voluntary because it was a direct result or true product of an unlawful arrest and thereby tainted. The South Carolina Court of Appeals was entirely correct when it noted in its opinion that Petitioner "does not claim his confession was not voluntary...." (Pet. App., p. A-2). Simply because a statement is given at some point in time after an allegedly unlawful arrest does not mean that the statement must be suppressed. "Voluntariness remains as the test of admissibility." State v. Lanier, S.C.App., Memo. Op. No. 85-MO-003, February 14, 1985. (Pet. App., pp. A-1 - A-2). Nothing in any authority cited by Petitioner contradicts this standard.

While a confession which results from the exploitation of an unlawful arrest is tainted and not properly admissible, the connection between the arrest and statement may become so attenuated as to dissipate the taint. A confession is not inadmissible per se because it follows an unlawful arrest chronologically. Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963). Miranda warnings do not by themselves automatically purge the taint of an unlawful arrest, Brown v. Illinois, 422 U.S. 590, 95 S.Ct. 2254, 45 L.Ed.2d 416 (1975); Dunaway v. New York, 442

U.S. 200, 99 S.Ct 2248, 60 L.Ed.2d 824 (19 , even when the Miranda warnings are given and understood, and the confession was voluntary for purposes of the Fifth Amendment. Taylor v. Alabama, 457 U.S. 687, 102 S.Ct. 2664, 73 L.Ed.2d 314 (1982). But when intervening events break the causal connection between the illegal arrest and the confession, the confession is admissible since it is "sufficiently an act of free will to purge the primary taint." Id. Where a defendant, as in the present case, does not maintain that there was a connection between an allegedly illegal arrest and his confession (confession was a fruit of his illegal arrest) and admits the confession was voluntary or an act of free will, the confession is admissible. Id.

CONCLUSION

For the foregoing reasons, Respondent submits that Petitioner's Petition for a Writ of Certiorari be denied.

Respectfully submitted,

T. TRAVIS MEDLOCK
Attorney General

HAROLD M. COOMBS, JR.
Assistant Attorney General

ATTORNEYS FOR RESPONDENT.

September 4, 1985

APPENDIX

MR. AUDNICK: Step down. Your Honor, basically what my motion would go to if not coerced in any way that he did not make a knowing and intelligent waiver in that he didn't know this statement would be used in a court of law. I believe you have heard the evidence and that's the gist of our ---

THE COURT: Let the record show that it is specifically recognized that this line of testimony has been taken in camera in the absence of the jury regarding solely the question of admissibility as required for consideration by the court. The court has listened to the two witnesses. The court is impressed by the defendant's recited that he did sign the paper, that he can read as well as the Solicitor can read, and the testimony by Officer Moseley that rights were read and that the defendant signed the acknowledgement of same. It is very obvious as we go forward in this matter that the finders of fact, namely the jury, even with the basis for admissibility laid, that the finders of the fact must determine themselves as a trial jury the same matters upon which the court is called upon to rule in a preliminary matter-in a preliminary manner. For such admissibility purposes and at this time I do find and recognize that the defendant made the statement, that the defendant was warned of his constitutional rights, that the defendant knowingly

and intelligently waived his constitutional rights and fourth that the statement was given voluntarily based upon the testimony which has thus far been received on those specific matters; and again recognizing that the ultimate determination of all of those factors are for the trial jury in the pursuit of this trial on its merits and based upon the continuing duty and responsibility of the finders of the facts;I do recognize for preliminary purposes that the State has got the burden to allow the admissibility thereof. Anything further at this time?

SOL. WEEKS: Nothing, your Honor.

MR. RUDNICK: Your Honor, there isn't anything further at this time. It may be that we may object during the trial if it is not shown that probable cause to arrest in this case . I realize you have already ruled on the waiver of rights and I would not like to object during the trial if you would not that for the record.

THE COURT: It is so noted. Your rights are preserved and reserved thereunder. Anything else?

SOL. WEEKS: Nothing, your Honor.

up some matters in your absence procedurally that are required to be taken up in your absence, plus we have another matter that we need to take up before the court that's not related to this case. And so you are probably going to get a, maybe a twenty-five minute break. We will get back with you just as soon as we can. Watch your step as you come down, have a nice break and do not discuss this case. Remember, that's our ongoing thing: do not discuss this case.

(The following takes place outside the presence of the jury.)

THE COURT: Let the record show that the jury has departed. Mr. Rudnick.

MR. RUDNICK: Yes, sir, your Honor, my motion would go to the fact that the defendant at this point has been arrested, he is getting ready to make a statement to Mr. Moseley , where we are in the trial. It is my contention that there was no reason to arrest Mr. Lanier to begin with. The only evidence we have so far that really mentioned Mr. Lanier's name is Mrs. Idell Davis saw them riding down the road at 6:00 o'clock in the morning, down I imagine an unrelated road; the robbery in question occurred at 2:00 a.m., 2:00 to 2:15 according to Mrs. Blanchard.She in no way pointed out the defendant. Mrs. Davis, as I stated, is four hours later. The only thing she can say is

four hours later she saw him riding down the road; and the statement from Mrs. Arthers was -- the record was that Mr. Sanders had first said that Mrs. Arthers said it was Lanier on the phone when in fact she said that it was Johnny Watkins and when the questioning continued, it was "well, it might have been Dale but it sounded to me like it was Johnny." So based on that fact I think that the defendant was illegally detained. There was no warrant out for his arrest at that time and there doesn't seem to be any exigent circumstances for him to be picked up; therefore, I would ask the court that the statement not be allowed into the record.

THE COURT: How about it, Solicitor?

SOL. WEEKS: Your Honor, the State's position in this matter is the totality of the circumstances involved certainly indicate that the defendant, Dale Lanier, was involved in the robbery. The investigation -- of course you sustained defense's objection as to the hearsay. It is my position thatprobable cause can be based on hearsay. It is based on it all the time. When they go to arrest Mr. Lanier, went to the house, they observed the wig matching the description and the glasses matching the description and the rolled up money there. They had previously just stopped Brenda Lanier with a pistol matching the description of the pistol used in the armed robbery. They have the information from the agent in the attempted armed

robbery that Mr. Lanier's name was mentioned, it could have been Mr. Lanier, the woman said in her statement, or it might have been Johnny Watkins, she wasn't real sure but she thought it was Johnny Watkins or something along those lines. Johnny Watkins, Brenda Lanier--Brenda Lanier Watkins-- and Dale Lanier lived in that residence. The police staked the residence out, observed the car there, they found the pistol in the car. Mr. -- Mrs. Davis is a key witness because she puts the defendant, Mr. Lanier, and Mrs. Watkins together in the car about 6:00 o'clock that morning on 126 in Aiken. I think the totality of the circumstances involved in this situation is more than enough to make out a probable cause. I am not saying it was enough at that point to convict Mr. Lanier but at that time I believe they had probable cause to arrest him.

THE COURT: Mr. Rudnick, among the many other small particulars which the record reflects it would appear that a viewing of the defeudant and Brenda Lanier Watkins or Brenda Watkins together at about 6:00 o'clock, this occurrence was on or about 2:15 or 2:00 or 2:15 or earlier the same morning, that that together with the various other particulars as referred to by the Solicitor and as the record reflects would be a sufficient basis that your objection is overruled and your objection is noted and respectfully overrruled.

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MR. RUDNICK: Your Honor, I would just like to point out for the record even based on this it was no warrant at the time he was arrested and I do believe under Peyton v. New York a warrant should have been required and ---

COURT REPORTER: What ---

THE COURT: Hold just a minute. She is having trouble. You will have to speak out more clearly.

MR. RUDNICK: Under Peyton v. New York absent any exigent circumstances the warrant would have been required and I would just like that be noted in the record.

THE COURT: Your further objections are also noted and at this time overruled. Go ahead, Solicitor. Are you through with matters necessary to take up in the absence of the jury?

SOL. WEEKS: Yes, sir.

THE COURT: Is the defendant ready for the jury?

MR. RUDNICK: Yes, sir, your Honor. Instead of objecting in the presence of the jury, I would like to note my

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prior motion and objection of the voluntariness of the statement with that being proferred at this time.

THE COURT: It is so noted without need of your repeating the objections. Bring in the jury, please.

(The following takes place within the presence of the jury.)

THE COURT: Mr. Moseley if you will resume the witness stand, please. Mr. Randy L. Moseley, continue under your oath, please, sir.

RANDY L. MOSELEY HAVING BEEN PREVIOUSLY SWORN, RESUMES THE WITNESS STAND.

DIRECT EXAMINATION BY SOL. WEEKS CONTINUES:

Q Investigator Moseley, did you obtain a statement from the defendant, Dale -- Kenneth Dale Lanier?

A Yes, sir, I did.

Q Regarding these robberies -- this robbery?

A Yes, I did.

Q Would you please tell me what the defendant related to you about his participation in this robbery.

A Yes, I will. Myself and Capt. Joe Martin, Investigator Jim Sanders interviewed Dale Lanier on April 20, 1983, at about 1:20 P.M. at the Aiken County Law Enforcement Center. He was advised of his rights, he affirmed that he understood his rights and signed what is known as a Rights Waiver. He indicated that he wished to talk with

SUPREME COURT OF THE UNITED STATES

KENNETH DALE LANIER *v.* SOUTH CAROLINA

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF SOUTH CAROLINA

No. 85-5260. Decided November 4, 1985

PER CURIAM.

The motion for leave to proceed in forma pauperis is granted. The petition for a writ of certiorari is granted.

Petitioner was convicted of armed robbery. He contends that his confession should have been suppressed because it was the product of an illegal arrest. The South Carolina Court of Appeals affirmed the trial court's rejection of his motion to suppress the confession:

> Assuming, without deciding, that Lanier's arrest was illegal, we nevertheless hold his confession was admissible. A confession made while the accused is in custody before any warrant for his arrest has been issued is not per se inadmissible. *State* v. *Funchess*, 255 S. C. 385, 179 S. E. 2d 25, *cert. denied*, 404 U. S. 915, 92 S. Ct. 236, 30 L. Ed. 2d 189 (1971). Voluntariness remains as the test of admissibility. *Id.* Even if the arrest was illegal, the confession will be admissible if it is freely and voluntarily given. *State* v. *Plath*, 277 S. C. 126, 284 S. E. 2d 221 (1981). Since Lanier does not claim his confession was not voluntary, his argument that the confession was inadmissible is without merit.

Pet. for Cert., at A-2. The South Carolina Supreme Court declined further review.

Under well-established precedent, "the fact that [a] confession may be 'voluntary' for purposes of the Fifth Amendment, in the sense that *Miranda* warnings were given and understood, is not by itself sufficient to purge the taint of the illegal arrest. In this situation, a finding of 'voluntariness' for purposes of the Fifth Amendment is merely a threshold

requirement for Fourth Amendment analysis." *Taylor* v. *Alabama*, 457 U. S. 687, 690 (1982). See also *Dunaway* v. *New York*, 442 U. S. 200, 217–218 (1979); *Brown* v. *Illinois*, 422 U. S. 590, 602 (1975). The reasoning of the South Carolina Court of Appeals is inconsistent with those cases. We therefore vacate the judgment and remand the case to the Supreme Court of South Carolina for further proceedings.

JUSTICE O'CONNOR, with whom JUSTICE REHNQUIST joins, concurring in the judgment.

I concur in the judgment of the Court vacating the judgment and remanding this case to the Supreme Court of South Carolina. For the reasons stated in my opinion in *Taylor* v. *Alabama*, 457 U. S. 687, 694 (1982) (O'CONNOR, J., dissenting), I believe the court on remand can consider the timing, frequency, and likely effect of whatever *Miranda* warnings were given to petitioner as factors relevant to the question whether, if petitioner was illegally arrested, his subsequent confession was tainted by the illegal arrest.

JUSTICE MARSHALL dissents from this summary disposition, which has been ordered without affording the parties prior notice or an opportunity to file briefs on the merits. See *Maggio* v. *Fulford*, 462 U. S. 111, 120–121 (1983) (MARSHALL, J., dissenting); *Wyrick* v. *Fields*, 459 U. S. 42, 51–52 (1982) (MARSHALL, J., dissenting).